

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DAVID CRUZ,

Plaintiff,

– against –

WYCOFF HEIGHTS MEDICAL CENTER and  
DIRECTOR OF RADIOLOGY JOHN LEISON,

Defendant.

**ORDER**

13 Civ. 8355 (ER) (FM)

RAMOS, D.J.:

Before the Court is the Report and Recommendation (“R&R”) dated April 27, 2015 of Magistrate Judge Frank Maas in response to a motion by Defendants Wycoff Heights Medical Center and John Leison (“Defendants”) to dismiss this action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure based on Plaintiff’s failure to prosecute. Doc. 42 (Mot.); Doc. 44 (R&R). In the R&R, Judge Maas recommends that Defendants’ motion to dismiss be denied. *Id.* However, he also recommends that Plaintiff’s counsel, Anthony Chukwuka Ofodile (“Mr. Ofodile”) be directed to serve his client, David Cruz (“Plaintiff”), with a copy of this Order and Judge Maas’s R&R and to compensate Defendants for three hours of their counsel’s time. *Id.* For the reasons stated herein, the Court ADOPTS the R&R and directs the entry of judgment as recommended.

**I. BACKGROUND**

Plaintiff commenced this action on November 15, 2013. Doc. 2 (Compl.). Mr. Ofodile entered a notice of appearance on April 30, 2014 and filed a letter, with Defendants’ Counsel’s consent, seeking additional time to amend the Complaint and complete discovery. Doc. 22.

Magistrate Judge Maas granted Mr. Ofodile's request on May 1, 2014. Doc. 23. Thereafter, Mr. Ofodile failed to appear at several scheduled conferences, to respond to Defendants' requests for discovery or to serve his own discovery requests, to produce his client for a deposition, and to respond to inquiries concerning his inactivity. R&R at 2-3. Following a telephone conference on September 16, 2014 in which Mr. Ofodile failed to participate, Defendants' Counsel submitted a letter to Judge Maas describing Mr. Ofodile's inaction and requesting that the Court dismiss this case with prejudice. Doc. 32. In response, Judge Maas ordered Mr. Ofodile to submit an affidavit explaining why Defendants' Counsel's request should not be granted. Doc. 34. Mr. Ofodile submitted such an affidavit on September 24, 2014. Doc. 36.

A conference was held before this Court on January 21, 2015. Although Mr. Ofodile was not present, another attorney appeared on Plaintiff's behalf to explain Mr. Ofodile's absence. On January 28, 2015, Defendants' Counsel submitted a second letter motion to Judge Maas requesting dismissal of this action for failure to prosecute, Doc. 42, and Mr. Ofodile filed a letter in opposition on February 2, 2015. Doc. 43. Another status conference was held before this Court on April 24, 2015 at which both Mr. Ofodile and Defendants' Counsel were present. Judge Maas issued his R&R on April 27, 2015, recommending that Defendants' motion be denied, but that Mr. Ofodile be ordered to compensate Defendants for three hours of their counsel's time. R&R at 6-7.

## **II. STANDARD OF REVIEW**

A district court reviewing a magistrate judge's report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). Parties may raise "specific," "written" objections to the report and recommendation "[w]ithin fourteen days after being served with a copy." *Id.*; *see also*

Fed. R. Civ. P. 72(b)(2). A district court reviews *de novo* those portions of the report and recommendation to which timely and specific objections are made. 28 U.S.C. § 636(b)(1)(C); *see also United States v. Male Juvenile* (95-CR-1074), 121 F.3d 34, 38 (2d Cir. 1997). The district court may adopt those parts of the report and recommendation to which no party has timely objected, provided no clear error is apparent from the face of the record. *Lewis v. Zon*, 573 F. Supp. 2d 804, 811 (S.D.N.Y. 2008) (quoting *Arthur v. Goord*, No. 07 Civ. 326 (DLC), 2008 WL 482866, at \*3 (S.D.N.Y. Feb. 21, 2008)). The district court will also review the report and recommendation for clear error where a party's objections are "merely perfunctory responses" argued in an attempt to "engage the district court in a rehashing of the same arguments set forth in the original petition." *Ortiz v. Barkley*, 558 F. Supp. 2d 444, 451 (S.D.N.Y. 2008) (citations and internal quotation marks omitted).

### **III. CONCLUSION**

No party has objected to the R&R. The Court has reviewed Judge Maas's R&R and finds no error, clear or otherwise. Judge Maas reached his determination after a careful review of the parties' submissions. R&R 2-7. The Court therefore ADOPTS Judge Maas's recommended judgment for the reasons stated in the R&R. Furthermore, the parties' failure to file written objections precludes appellate review of this decision. *PSG Poker, LLC v. DeRosa-Grund*, No. 06 CIV. 1104 (DLC), 2008 WL 3852051, at \*3 (S.D.N.Y. Aug. 15, 2008) (citing *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997)).

It is SO ORDERED.

Dated: May 15, 2015  
New York, New York




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Edgardo Ramos, U.S.D.J.